

REMARKS

In the Office Action dated April 21, 2004, claims 1-20 are pending. Claims 1, 11, 16, and 19 are independent claims from which all other claims depend therefrom. Claim 15 has been amended to remove the use of "said controller", which lacked antecedent basis. Note that claims 11 and 19 have been amended. Claims 12 and 20 have been canceled.

Referring to MPEP 706.07(a), Applicants, respectfully, submit that this action has been improperly been made final. Although under present practice a second or subsequent action may be made final even when the Examiner introduces a new ground of rejection as is necessitated by applicant's amendment, a second or subsequent action will not be made final if it includes a rejection, on newly cited art. Applicants submit that all of the current rejections are at least partially based in view of a newly cited reference, namely Sielagowski et al (USPN 6,212,465). Sielagowski has not been cited or relied upon in any of the previous Office Actions nor has it been cited in an IDS, but rather is cited for a first time in the present Office Action. Thus, the current action should be deemed non-final.

Claims 1-5, 7-10, and 16-18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama et al. (USPN 6,246,932) in view of Sielagowski et al. (USPN 6,212,465). Note that the arguments with respect to the teachings of Kageyama provided by the Examiner are identical to those previously provided in the First Office Action of May 13, 2003. Since that time there has been a Response to the First Office Action, a Response to a Final Office Action, an Appeal Brief, and a Response to a First Office Action after Appeal containing amendments, remarks, and arguments in regards to the stated claims. The Applicants have provided amendments and arguments for the allowance of the stated claims in the Responses and in the Appeal Brief. The Examiner has again not responded to these arguments. Applicants submit that the amendments and arguments previously provided to allow the stated claims remain, are sufficient

for the allowance of the stated claims, and the arguments are restated below in addition to newly presented arguments, which further provide support for the allowance of the stated claims.

Claims 1 and 16 recite a method and system for adaptively controlling the speed of a vehicle. An object is detected and an object profile is generated. A navigation signal is generated by a navigation system. A future path of the vehicle is determined in response to the navigation signal. An in-vehicle controller generates a predicted future path profile in response to the future path and the object profile. Resume speed of the vehicle is inhibited by preventing the acceleration of the vehicle in response to the predicted future path profile.

Kageyama is directed towards a vehicle monitor for controlling the movements of multiple vehicles. Multiple vehicles are controlled from a remotely located monitoring station via communication signals transmitted and received between the monitoring station and the vehicles. Kageyama does not teach or suggest the use of an in-vehicle controller for adaptively controlling the speed of a vehicle. In Kageyama, vehicle control signals are transmitted from the monitoring stations to the vehicles.

The Office Actions state that Kageyama teaches detecting a future path of a vehicle and refers to col. 11, lines 11-17. Kageyama does not teach or suggest detecting a future path of a vehicle, let alone performing the detection via a navigation system. The Final Office Action stated that Kageyama teaches using a planned traveling path and that the planned traveling path is well understood. Applicants agree. However a planned traveling path is clearly different than a detected or predicted future path. The planned traveling path of Kageyama is predetermined by the monitoring station, whereas the future path of claims 1 and 16 are determined and predicted using a navigation system. This is reinforced by the limitation of generating a predicted future path profile. The monitoring station 20 of Kageyama does not detect a future path of the vehicle in response to a navigation signal, such as one generated by a global positioning system, but

U.S.S.N. 10/063,498

9

199-1941 (FGT 1503 PA)

rather has a planned path that is predetermined. The monitoring station 20 simply directs a vehicle of concern to follow a predetermined path in response to the relative location of other monitored vehicles. The monitoring station 20 at any given moment in time does not determine or predict a future path of a vehicle, the path is already known.

The Office Actions state that Kageyama teaches generating a predicted future path profile in response to the future path and the object profile and refers to col. 11, lines 26-30, which also disclose a planned traveling path. Kageyama does not generate a predicted future path profile, but rather follows a predetermined traveling path. The controllers of claims 1 and 16, of the present invention, generate a predicted future path profile in response to a currently detected future path, not a predetermined traveling path, of the vehicle 22. Note that the Current Office Action refers to a predetermined traveling path for both the future path and the predicted future path profile, which as defined by the present invention are not the same.

The Office Actions further state that Kageyama teaches inhibiting the speed of a vehicle in response to a predicted future path profile. Since Kageyama does not teach or suggest the detection of a future path or the generation of a predicted future path profile of a vehicle, Kageyama also does not teach or suggest the inhibition of the resume speed of a vehicle in response thereto.

In addition, the Office Action of February 10, 2004, correctly stated that Kageyama does not specify resume speed. Kageyama does not mention, set, determine, or inhibit a resume speed of a vehicle nor does Kageyama teach or suggest the use of an in-vehicle controller to inhibit the resume speed of a vehicle. The Final Office Action of September 12, 2003 states that Kageyama has at least one in-vehicle controller that performs this function when it receives the information from the vehicle running ahead, and refers to col. 9, lines 47-51. In col. 9, lines 47-51, Kageyama discloses stopping and reducing the speed of a vehicle in response to directive data received from the monitoring station 20. As

U.S.S.N. 10/063,498

10

199-1941 (FGT 1503 PA)

stated above reducing the speed of vehicle is not the same as preventing the acceleration of a vehicle. The vehicle controller 35 of Kageyama, shown in Figure 3, receives signals from the monitoring station 20 and in response thereto stops or reduces speed of the vehicle. Although the controller 35 may be used in controlling speed of a vehicle, nowhere in col. 9, lines 47-51 or anywhere else in Kageyama is a resume speed, inhibition of a resume speed, prevention of acceleration, or inhibition of a resume speed by an in-vehicle controller mentioned or suggested, and clearly not in response to a predicted future path profile, as described above.

Additionally, referring to MPEP 2141.01(a), while the Patent Office classification of references and cross-references in the official search notes are some evidence of "nonanalogy" or "analogy" respectively, the court has found "the similarities and differences in structure and function of the inventions to carry far greater weight." *In re Ellis*, 476 F.2d 1370, 1372, 177USPQ526, 527 (CCPA 1973). Kageyama would not have logically commended itself to an inventor's attention in considering the problems solved by the method and system of claims 1 and 16. In developing an adaptive onboard control method for controlling the speed of an automotive vehicle for incorporation into an adaptive cruise control system, one would clearly not look to a vehicle monitor within a remotely located monitoring station. As stated the monitor of Kageyama monitors remote vehicles and directs a vehicle of concern to follow a predetermined path in response to the relative location of other monitored vehicles and a pre-planned route. The monitoring system of Kageyama would not have logically commended itself to the Applicants' attention in solving the problems associated with adaptive cruise control. Kageyama would not be reasonably pertinent to the particular problems solved by the method and system of claims 1 and 16. Thus, the Applicants submit that Kageyama is nonanalogous art.

Applicants submit that Sielagowski has been improperly relied upon with respect to claims 1-5, 7-10, and 16-18. The current Office Action states that Kageyama does not teach generating a yaw rate signal and preventing

U.S.S.N. 10/063,498

11

199-1941 (FGT 1503 PA)

acceleration (inhibiting the resume speed) of the vehicle in response to the yaw rate signal. Applicants agree. However, the current Office Action relies on Sielagowski for such teaching. Applicants submit that whether Sielagowski provides such teaching is irrelevant. The limitations of generating a yaw rate signal and preventing acceleration of the vehicle in response to the yaw rate signal are not recited in any of claims 1-5, 7-10, or 16-18. Thus, Sielagowski is not a valid reference with respect to claims 1-5, 7-10, and 16-18.

Applicants submit that since Kageyama is nonanalogous art and does not teach or suggest each and every element of the claims 1-5, 7-10, and 16-18 and since Sielagowski is not a valid reference, that claims 1-5, 7-10, and 16-18 are novel, nonobvious, and are in a condition for allowance.

Claim 6 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Kageyama in view of Sielagowski. The current Office Action states that Kageyama does not teach what is claimed by the Applicants. Applicants agree. However, the current Office Action relies on Sielagowski for such teaching. Applicants submit that since Kageyama fails to teach or suggest each and every limitation of claim 1 and since claim 6 depends from claim 1 that claim 6 is also novel, nonobvious, and is in a condition for allowance for at least the same reasons.

Claims 11 and 19 stand rejected under 35 U.S.C. 102(b) as being anticipated by Sielagowski. Claims 11 and 19 have been amended to include the limitations recited in original claims 12 and 20, respectively. Applicants submit that since the limitations recited in original claims 12 and 20 are not taught or suggested by Sielagowski, that claims 11 and 19 are also novel, nonobvious, and are in a condition for allowance.

Claims 12-15 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Sielagowski in view of Kageyama. Note that claims 12 and 20 have been canceled. Applicants submit that since claims 13-15 depend from claim 11, which now contains limitations that are not taught or suggested by

U.S.S.N. 10/063,498

12

199-1941 (FGT 1503 PA)

Sielogoski, Kageyama, or a combination thereof, that claims 13-15 are also novel, nonobvious, and are in a condition for allowance for at least the same reasons.

Also, would not have been obvious to one of skill in the art to combine and modify the teachings of Kageyama and Sielagoski, as is necessary, to arrive at the claimed invention. Referring to MPEP 2141.01, while Patent Office classification of references and cross-references are some evidence of "nonanalogy" or "analogy" respectively, the court has found "the similarities and differences in structure and function of the invention to carry far greater weight", *In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527. Kageyama is directed to remote monitoring of vehicles not to onboard aboard adaptive cruise control systems. Since Kageyama, as stated above, is nonanalogous art it would not have been obvious to combine the teachings of Kageyama with that of Sielogoski. In addition, since Kageyama and Sielogoski fail to teach or suggest each and every element of claim 11, since there is no motivation provided to combine and modify the stated references to arrive at the claimed invention of claim 11, and since claims 12-15 depend from claim 11, it would also not have been obvious to combine and modify the stated references to arrive at the claimed invention of claims 12-15.

Applicants therefore submit that each and every limitation of claims 1, 11, 16, and 19 are not taught or suggested by Kageyama, Sielagoski, or a combination thereof and are therefore novel, nonobvious, and allowable. Furthermore, since claims 2-10, 13-15, and 17-18 depend from claims 1, 11, and 16, respectively, they are also novel, nonobvious, and are in a condition for allowance for at least the same reasons.

U.S.S.N. 10/063,498

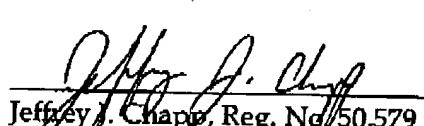
13

199-1941 (FGT 1503 PA)

In light of the amendments and remarks, Applicants submit that all objections and rejections are now overcome. The Applicants have added no new matter to the application by these amendments. The application is now in condition for allowance and expeditious notice thereof is earnestly solicited. Should the Examiner have any questions or comments, she is respectfully requested to call the undersigned attorney.

Respectfully submitted,

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